INFORMATION TECHNOLOGY INDUSTRY COUNCIL

RECEIVED

MAR 1 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 11, 1999

VIA HAND DELIVERY

Ms. Magalie Roman Salas Secretary Federal Communications Commission 445 Twelfth Street, SW - TW-A325 Washington, DC 20554

Re: Ex Parte Filing: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Dkt. 98-147

Dear Secretary Salas:

This will serve as notice that the Commission personnel listed below have received copies of the attached document on behalf of the Information Technology Industry Council.

Pursuant to 47 C.F.R. Section 1.1206(a)(1), two copies of this letter are being filed with the Secretary of the Commission today.

No. of Copies rec'd O

Respectfully submitted ABCDE

Fiona J. Branton

Vice President, Government Relations, and Chief Counsel

Information Technology Industry Council

Secretary Salas March 11, 1999 Page 2 of 2

cc: Chairman Kennard

Commissioner Ness

Commissioner Furchtgott-Roth

Commissioner Powell

Commissioner Tristani

Mr. Thomas Powers

Ms. Linda Kinney

Mr. Kevin Martin

Mr. Kyle Dixon

Mr. Paul Gallant

Mr. Lawrence Strickling

Mr. Robert K. Atkinson

Mr. Donald K. Stockdale

Ms. Jane Jackson

Mr. Michael Pryor



RECEIVED

MAR 121999

March 11, 1999

FEDERAL COMMUNICATIONS COMMISSIONS
OFFICE OF THE SECRETARY

The Honorable William E. Kennard Chairman Federal Communications Commission 445 12th Street, S.W. Room 8B 201 Washington, DC 20554

Dear Chairman Kennard:

No single factor will have a greater impact on the growth of the Internet or the development of electronic commerce than the availability of advanced services to connect information service providers ("ISPs") and their customers. Incumbent local exchange carriers ("ILECs") are a crucial source for such services, particularly in the near future. The Information Technology Industry Council ("ITI") urges the FCC to ensure that the tariffing and pricing requirements of the Communications Act are not interpreted in such a way as to frustrate the availability of broadband services to ISPs, or to discourage ILECs from offering such services, at just and reasonable prices.

The Commission has previously observed that advanced services may constitute either telephone exchange service or exchange access service. To the extent that an ILEC establishes a particular advanced service offering as an exchange access service in interstate access tariffs filed with the FCC, the service and tariffed prices should be equally available to ISPs just as other access services are available to non-carriers today. The mere availability of the service to non-carriers provides no basis for preventing an ILEC from establishing the service as an access offering or for classifying the service as a retail offering, particularly where the non-carrier customer uses the service as an input in its own retail offerings. Any question as to whether a particular advanced service is "offered predominantly" to retail customers can only be resolved in the context of a specific filing for a specific service. Any attempt to resolve the question as part of a generic rulemaking would be premature.

Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Notice of Proposed Rulemaking*, CC Docket No. 98-147, FCC No. 98-188 (rel. Aug. 7, 1998) ("Advanced Services NPRM").at para. 40.

ld.at para 188.

ILECs are required by the Communications Act to make telecommunications services provided at "retail" available for resale at wholesale rates. Nothing in the Act prevents an ILEC from offering an advanced service in its interstate access tariff at a wholesale price that meets the statutory standard for wholesale discounts because the service does not include features (e.g., marketing, billing and collection, etc.), and therefore costs, that would be included in a retail service.

When an ILEC chooses to offer a discounted wholesale access service, the Commission cannot deny ISPs access to the offering without violating its own pro-competitive policies and the statutory goals of promoting "the continued development of the Internet and other interactive computer services" and "preserv[ing] the vibrant and competitive free market that presently exists for the Internet and other interactive computer services." ISPs can play a unique and highly effective role in speeding the deployment and marketplace acceptance of advanced services if they are not thwarted in their attempts to obtain these services at economically efficient prices. The Commission must not deny ISPs access to the lower wholesale prices that an ILEC may establish for access services that ISPs can use as inputs for their own offerings. ITI urges the Commission to avoid any interpretation of the Communications Act that would blunt the ability of ISPs to participate in the deployment of advanced services and impede the competitive growth of the information services market by denying ISPs access to better prices for their input services.

Sincerely,

Fiona Branton

Vice President and Chief Counsel

Frona Granton

³ 47 U.S.C.§ 230(b)(1) and (2).